

DRE FORUM
Monterey Conference Center
Monterey, CA
January 28, 2005

MEETING REVIEW

ATTENDEES: Commissioner Jeff Davi, John Liberator, Larry Alamao, Bill Moran, Fa-Chi Lin, Barbara Bigby and Lisa Stratton.

1) OPENING REMARKS:

Commissioner Davi opened the meeting at 1:00 p.m. He expressed appreciation at the support that he has received from the CAR membership since assuming office. The Commissioner also encouraged opportunities for open dialogue between the Realtor community and DRE staff, such as what is provided through holding the DRE Forum meetings. He followed up with introductions of the department staff in attendance at the meeting.

The Commissioner stated that the DRE is taking the lead in making government more efficient and effective through a process called Functional Integration. This process involves finding areas of common alignment between four departments with like services : Departments of Real Estate, Corporations, and Financial Institutions, and the Office of Real Estate Appraisers. A multi-phase project, Phase I involved identifying areas of commonality in processes and functions, and Phase II, which is currently in progress, is about taking those common processes and aligning them with the four departments in an effort to become more efficient. Barbara Bigby will further address functional integration later in the program.

Commissioner Davi announced that he was invited by the Secretary of the Business, Transportation & Housing Agency to be a part of a housing coalition, which includes the Department of Housing and Community Development and the California Housing Finance Agency. This group will meet monthly to discuss the housing issues currently facing California and work to find solutions to those issues for the betterment of the people of California.

Governor Schwarzenegger recently announced his plans to reduce the size of State government through the abolishment of nonessential boards and commissions, which total approximately eighty-eight. Commissioner Davi supports the Governor's plan, which includes the elimination of the Department of Real Estate's Real Estate Advisory Commission (REAC). The REAC is an advisory commission to the Department, but Commissioner Davi feels the same function could be carried out through the formation of ad hoc committees organized on an as-needed, voluntary basis. The Department has already established one such committee to address the issue of nicknames, and another with the timeshare industry to address issues of concern with respect to the regulation of that industry. Although the DRE may lose the REAC, the Commissioner believes it will gain much more in the open dialogue it can receive from all areas of industry.

2) OPERATIONS REPORT – JOHN LIBERATOR

John Liberator began his report by announcing the availability of the 2005 Real Estate Law Book. The law book can currently be accessed free of charge on the DRE's website (www.dre.ca.gov) or can be purchased in paper form with CD for \$25 from the district offices, once the paper copies become available in early February.

As to the Department's fiscal status, Liberator summarized the first 6 months of the 2004/05 fiscal year, which is the period of July thru December, with the same period in the 2003/04 fiscal year.

Revenue was up 19 percent, primarily due to the increase in licensing activity.

Expenditures were up 9 percent, partially due to the use of temporary help and overtime to help address the workload, and the costs associated with the increased use of outside facilities to accommodate the high volume of exam applicants.

Reserves were up 50 percent to \$26.8 million.

As to Licensing activity, comparing July through December 2004 with the same period in 2003: Salesperson Exams – up 39 percent.

Broker Exams – up 22 percent.

The volume of exam applicants is heavy. In March and April, 62,000 applicants will be scheduled for license exams. In comparison, four years ago that was the number of exams given on an annual basis.

Original Sales licenses issued - up 56 percent.

Original Broker licenses issued – up 86 percent.

As to renewals, 82 percent of salesperson licenses up for renewal were renewed, and 97 percent of broker licenses up for renewal were renewed. This signifies that the licensee base should remain strong through the next four years, which is the term of a real estate license.

Licensee Population:

367,779 as of December 31, 2003

418,044 as of December 31, 2004

Reflects an increase of 14 percent over a 12 month period.

As of January 19, 2005, the licensee population had risen to 422,000.

In order to handle the high volume of exam applicants, Liberator reported that the Department has been scheduling “mega” exams at numerous off-site facilities, allowing between 2,000 – 3,000 applicants to be tested per day. These mega exams should help keep the applicant pool moving and processing times down to a reasonable level.

Liberator encouraged the use of the DRE website and eLicensing system whenever possible. eLicensing is easy to use and provides real time processing. Since eLicensing was introduced in September 2002, approximately 265,000 license and exam related transactions have been processed on line. The system will be further expanded in March to allow original exam applicants to schedule their exams online, which currently can only be done manually.

Thanks to the passage of SB 1080 in 2003, the Department is now allowed to accept fingerprints from exam applicants. In the past, fingerprints could only be accepted from license applicants. Also, AB 2007, which becomes effective July 2005, will allow the department to accept a combined exam/license application on an optional basis. This will allow for parallel processing, which should lessen processing times. With this authority, once the department fully develops its electronic examination system, the first phase currently planned for FY 2006/07, temporary licenses may be issued at the time of passage of the exam, conditioned upon the applicant having taken advantage of those options and the fingerprints and applications are clear with no deficiencies.

As to Subdivisions, Liberator reported that applications for subdivision public reports increased by 11 percent over 2003, which reflects a fairly strong new housing market.

As to Enforcement statistics, comparing the six month period of July through December, 527 original licenses were denied in 2004, as compared to 402 in 2003; 271 existing licensees were disciplined in 2004, as compared to 230 in 2003; and 32 Desist & Refrain Orders were issued in 2004, as compared to 17 in 2003.

Liberator concluded his remarks by announcing that the DRE will soon be progressing to an electronic Real Estate Bulletin. The March issue of the Bulletin will be the last paper copy to be published. All future issues will appear on the DRE website according to a published schedule. If a person wishes to maintain a paper subscription to the Bulletin, they will have the option to do so by sending the department a letter requesting that service. All details will be explained in the March issue of the Bulletin.

3) ENFORCEMENT CASES – BILL MORAN

Moran discussed the details of two cases involving licensees who owned property for sale and attempted to hide behind the “as-is” clause as a basis for non-disclosure of material facts. Both cases resulted in license discipline due to failure to disclose. Use of the “as-is” clause does not excuse the licensee/seller from making proper disclosures.

4) AUDIT CASES – FA-CHI LIN

Fa-Chi Lin discussed two recent audit cases; one involving a trust fund shortage due to conversion of trust funds, and the second involving a bounced trust fund check. Both cases resulted in license revocation.

5) FUNCTIONAL INTEGRATION – BARBARA BIGBY

Barbara Bigby reported on the Functional Integration Project, an effort pursued at the direction of the Business, Transportation & Housing Agency in furtherance of Governor Schwarzenegger’s desire to advance State government into the 21st Century so that it is more responsive to the needs of its citizens and business community. The Departments of Real Estate, Corporations and Financial Institutions and the Office of Real Estate Appraisers entered into a partnership wherein the business processes and functions of those departments were analyzed to find processes/functions common to all four, which if combined or shared, would allow all the departments to offer more effective, efficient service. Having completed the analysis phase, the departments are now in the process of taking those identified items of commonality and integrating them among the four departments. Ultimately, the functional integration of the DRE, Corporations, Financial Institutions, and OREA will facilitate the delivery of improved real estate and financial services to California.

6) OPEN FORUM

Q) Company is initiating a transaction management system. Until now, we have always held onto the original documents. Must hard copies of the documents be maintained if the system keeps images of those documents?

A) No, you would no longer be required to keep the hard copy. Regulation 2729 sets up the standard for keeping electronic documents.

Q) A former Association member, whose license was previously revoked based upon a felony violation, wants to get her license reinstated, and has asked for a letter from the Association supporting the reinstatement. In a case like this, are there really reinstatement rights, what action does the department take, and is it a good idea to supply such a letter?

A) License revocations are not forever. The licensee would submit a Petition for Reinstatement, which is a request to the Commissioner asking that his/her license be reinstated. Typically, a minimum of 1 to 2 years must pass before a licensee can apply for reinstatement. DRE would perform an investigation, and look to see if the applicant has met the set Criteria for Rehabilitation. It is ultimately the Commissioner's decision, based upon the facts, if the license will be reinstated and under what terms, if any. By writing a letter, the Association would essentially be endorsing the licensee. It is up to the Association as to whether or not they are comfortable in doing so.

Q) There are many companies using the term "MLS" in their names, which we feel is misleading to the public. We're aware that the DRE no longer issues licenses to companies using "MLS," however, what is the department doing about the licensees currently using the name? They're online and out there for the public to find. Additionally, it appears there are companies using the term by filing an FBN with County Recorders Office and not going through the DRE. What can the DRE do about this situation?

A) If a company is not licensed by the DRE, all the Department can do is issue a D&R order. DRE previously issued licenses containing "MLS," but stopped that practice approximately one year ago after being informed of industry's concern. There are currently around 16 FBNs out of 127,000 brokers and 55,000 dba's. Over time, those companies will cease doing business, and the name will cease to exist. We can't take a name away from a company after its been given as the name in effect becomes someone's livelihood, and good will is attached to that name. The DRE would open itself up to lawsuits if it attempted to require those names to be changed and it is possible we may not be able to sustain as there has probably been good faith reliance.

Q) With respect to the number of licensees renewing, are there any statistics on the number of provisional licensees who actually fulfill the education requirements?

A) We don't currently have that information, but staff could run the numbers. Leave your card with Barbara.

Q) When a license applicant discloses a violation, is it a good idea for them to provide more detailed information on the violation/conviction, as well as a letter from the employing broker stating they are aware of the violation and are willing to take them on? Also, what is moral turpitude?

A) Moral turpitude is defined as an act of vileness that shouldn't occur in a decent society. The background investigative process involves much more than getting Department of Justice information. Investigations are conducted to gain the background of an individual to determine if that person should have a license, including a review of relevant court documents and police reports. It is helpful for an applicant to obtain certified copies of court documents and arrest reports, and send them in with the application. A broker's endorsement is also helpful to the applicant, but it wouldn't speed up the review process.

Q) The Real Estate Bulletin has a section on license surrenders. Once surrendered, does the department set aside its investigation or do you continue to look into the applicant's background?

A) In most cases, a license is surrendered following, or even during, an investigation. A license surrender is a voluntary process worked out with DRE. If the licensee wants to get the license back following a surrender, he/she would have to go through the normal reinstatement process.

Q) I am licensed by OREA as an appraiser. When the DRE takes over OREA, will there be a change in the Appraiser licensing fee? An appraiser license currently costs \$600 every two years. Broker licenses are substantially cheaper.

A) No consolidation of DRE and OREA is on the table at this point, however, it is an idea expressed in the report prepared by the Governor's California Performance Review. If a consolidation does occur, it is doubtful that appraiser license fees will drop as the licensing functions will be separate from those of a real estate license.

Q) Quite often individuals want to know if there is going to be difficulty in getting a license due to a criminal conviction before they go through the entire licensing process. I have referred them to the DRE's Enforcement section for answers, however, they are ultimately told they must go through the application process – that a yes or no answer can't be given. Is there any way a potential license applicant can get an idea of whether their conviction will have a bearing on getting a license without having to go through the entire application process?

A) In some instances, staff could probably answer the question, but in each and every case, an applicant has a right to a full hearing where they can present their side to an independent Administrative Law Judge and try to convince that individual that they deserve to hold a license. Ultimately, there are no cut and dry answers. Each situation is unique and deserves a full investigation before determining an applicant's fitness for licensure.

Q) Nationally, California is the envy of all other states for having our Department of Real Estate. There are so many states which do not have that oversight. The increase in licensees is resulting in an increase in the number of Realtors. Thanks for everything you do for our industry.

Q) You mentioned the Nickname Task Force. Will that task force look at situations where licensees are using FBNs in their business practices?

A) The Task Force will look at the problem of licensees who advertise and conduct their business using a name not on their license record. Problems arise when a consumer tries to check the status of a license on the website database, and can't locate the licensee because the he/she is known by a name other than the name upon which the license was issued. The Task Force will try to find answers to these problems without causing unnecessary hardship to the industry.

Q) Forty-five hour CE courses continue to be offered over a two hour bus ride to Napa. Your comments?

A) Its a concern, and some individuals will take advantage of it. Ultimately, that will hurt the reputation of the industry. There are good courses out there and serious practitioners will seek them out. There's not a simple solution to the problem.

Q) Working for the owner of a corporation whose individual broker license has expired. He said that he was still authorized to do business because his corporate license had not expired. Is this true?

A) If he is properly licensed as an officer of that corporation, he is ok to operate. Technically, he could have operated under either license.

Q) If a license applicant was originally prevented from licensure due to a criminal conviction, and subsequently both convictions were expunged, would the DRE take another look based upon those expungements?

A) Convictions will always be on record even though expunged but an expungment could have a bearing on the decision to issue a license. The applicant would need to reapply and include those expungments as elements of rehabilitation.

Q) Can a corporation licensee contract with another corporation licensee to sell real estate?

A) Yes. Conceptually this is no different than a broker working for a broker. There would still have to be employment agreements. Remember, however, that a sales licensee can only work for one broker at a time.

Q) eLicensing is simple, effective and easy to use. However, when I attempted to make a change to my corporate license, eLicensing was unavailable. Are there plans to improve eLicensing to accept corporate license changes?

A) Not at this time. Changes for a corporate license typically require submittal of additional documentation in support of that change and until we can get over the hurdle of accepting that documentation, its not coming to the top of the priority list. We're looking at other areas in eLicensing where we can provide status information back to you on those applications that you do have to submit through the mail. For example, if you mail in a corporate application, we hope to be able to allow you to check eLicensing to find out the status of that application.

Q) What is the expected completion timeframe for a complaint that is filed with the DRE?

A) Timeframes vary based upon the complexity of the case. Currently, all but 35% of the complaints are handled in less than 6 months. Only 9% are over one year. Remainder of the cases are completed between 6 months and one year.

Q) How is a broker to protect himself from license disciplinary action when he discovers someone in his company has committed fraud? The broker releases the licensee, and doesn't report the fraud to the DRE for fear of being subjected to disciplinary action simply for being the broker of record. Brokers want to do the right thing, but sometimes don't for fear their licenses will be in jeopardy. What do you suggest?

A) If the broker wasn't aware the fraud was being committed, and the expectation is that you couldn't have reasonably known that the fraud was being committed, your license probably wouldn't be in jeopardy. The key problem is that if these licensees are simply let go, they put their licenses with another broker and continue to commit the same violations. If a broker fires someone for violation of a license law, misrepresentation or fraud, there is a legal obligation on the part of the broker to notify the DRE in writing that the licensee has been terminated. If you don't notify the DRE, that's grounds for disciplinary action against your license. The Department also doesn't want to create a safe harbor for bad brokers to hide behind. This issue is obviously a concern to the Department, and perhaps a committee should be set up in the future to find a solution to the problem.

Q) Problems with eLicensing: getting kicked off during a transaction and difficult to get through the phone lines. Are you aware of those problems and when can we expect them to be resolved?

A) The Department will be making some improvements towards the end of the month which should resolve the congestion problem. eLicensing has several different routes from which it converses when transactions are conducted online. Recently, some of those routes have been blocked, which is part of the problem. The Department of Finance is also in the process of reviewing a Feasibility Study Report which will allow the Department to replace its IVR system. In the meantime, staff has been added to the phone lines, some of the wording on the existing IVR message has been changed to make it easier to understand, some of the wait cues have been modified and other technologies have been added to the system which should help our customers get through the lines easier.

Q) As a broker, I left a company voluntarily and moved my license to another company. My former broker then informed someone I had been “terminated” from the firm. The Department doesn’t distinguish between a voluntary and involuntary move from one firm to another. As a broker, I’m aware that the term “terminated” refers to the relationship, but the public might perceive it to be the same as a firing.

A) The word “terminated” is actually written in the code. If a change to the code is pursued legislatively, the department would cooperate with such an action.

7) CLOSING REMARKS

Commissioner Davi thanked everyone for attending and announced that the next meeting of the DRE Forum is scheduled for June 10, 2005, in Sacramento.

Lisa Stratton
Recorder